

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

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Date:
January 07, 2010

LEGEND

Trust	=
Advisor	=
Accounting Firm	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
Date 6	=
Date 7	=
Date 8	=
Year 1	=
Territory	=
State X	=

Dear :

This responds to your letter dated September 8, 2009, submitted on behalf of Trust. Trust requests, under section 301.9100-1(c) of the Procedure and Administration Regulations, a ruling that its election under section 856(c)(1) of the Internal Revenue Code (Code) to be treated as a real estate investment trust (REIT) made on its Form 1120-REIT filed Date 8 for its taxable year ending Date 3 be considered as timely made.

FACTS

Trust is organized to acquire, hold and manage commercial loans, mezzanine debt and preferred equity investments collateralized by commercial and multifamily

properties and investments in real estate operating companies in the U.S. and Territory, as well as selected investments in obligations backed by pools of mortgage loans.

Trust, a State X corporation, formed on Date 1, commenced operations Date 2. Trusts represents that at all times it both has intended to elect to be classified as a REIT and has operated in a manner intended to qualify as a REIT pursuant to section 856.

Trust retained Advisor as a general advisor to provide management, acquisition, advisory, and administrative services. Advisor, in turn, engaged Accounting Firm to provide tax services. Advisor employs all of the employees that perform the day-to-day financial, legal, and accounting operation of Trust. Accounting Firm is responsible for preparing the federal and state income tax returns for Trust. In this capacity, Accounting Firm is responsible for preparing Form 7004, Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns, for Trust's Form 1120-REIT, U.S. Income Tax Return for Real Estate Investment Trusts. Advisor is responsible for filing Form 7004. Advisor management received the completed Form 7004 from Accounting Firm on Date 4. Advisor management delivered the form for mailing to Advisor's mailroom on Date 5. Advisor's mailroom, however, inadvertently failed to mail the Year 1 Form 7004 on behalf of Trust by Date 6, the filing due date. The form was mailed on Date 7, as evidenced by certified mail return receipt. Advisor management was not aware at the time that the form had been mailed Date 7.

The following month, Trust received Form 6513, Extension of Time to File, from the Internal Revenue Service (Service) noting that Trust did not timely file Form 7004. Upon further investigation, Advisor management discovered Advisor's mailroom staff mailed the Form 7004 on Date 7. Accounting Firm is engaged by Advisor on behalf of Trust to prepare the Form 1120-REIT for the tax year ending Date 3. Upon discovery of the late-filed Form 7004, Advisor requested that Accounting Firm take steps to request relief from the Service with respect to the late filing of the Form 7004. Accounting Firm accelerated its preparation of Trust's Form 1120-REIT. Trust filed its initial Form 1120-REIT for the taxable year ending Date 3 on Date 8. On Trust's Form 1120-REIT, Trust elected REIT status under section 856(c) of the Code. However, because Trust had not timely filed a Form 7004, Trust's Form 1120-REIT was not timely filed. Accordingly, Trust submitted this request for a private letter ruling under section 301.9100-1(c) of the Procedure and Administration Regulations requesting that the election of REIT status Trust made on its Form 1120-REIT that was filed on Date 8 for the tax year ending Date 3 be considered as timely made.

Trust makes the following additional representations:

1. The request for relief was filed by Trust before the failure to make the regulatory election was discovered by the Service.

2. Granting the relief will not result in Trust having a lower tax liability in the aggregate for all years to which the regulatory election applies than Trust would have had if the election had been timely made (taking into account the time value of money).
3. Trust does not seek to alter a return position for which an accuracy-related penalty has been or could have been imposed under section 6662 of the Code at the time Trust requested relief and the new position requires or permits a regulatory election for which relief is requested.
4. Being fully informed of the required regulatory election and related tax consequence, Trust did not choose to not file the election.

LAW AND ANALYSIS

Section 856(c)(1) provides that a corporation, trust, or association shall not be considered a REIT for any taxable year unless it files with its return for the taxable year, an election to be a REIT or has made such election for a previous taxable year, and such election has not be terminated or revoked. Pursuant to section 1.856-2(b) of the Regulations, the election shall be made by computing taxable income as a REIT in its return for the first taxable year for which it desires the election to apply.

Section 301.9100-1(c) of the regulations provides that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election (defined in section 301.9100-1(b) as an election whose due date is prescribed by regulations or by a revenue ruling, a revenue procedure, a notice, or an announcement published in the Internal Revenue Bulletin), or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3(a) through (c)(1)(i) sets forth rules that the Internal Revenue Service generally will use to determine whether, under the particular facts and circumstances of each situation, the Commissioner will grant an extension of time for regulatory elections that do not meet the requirements of section 301.9100-2. Section 301.9100-3(b) provides that subject to paragraphs (b)(3)(i) through (iii) of section 301.9100-3, when a taxpayer applies for relief under this section before the failure to make the regulatory election is discovered by the Service, the taxpayer will be deemed to have acted reasonably and in good faith; and section 301.9100-3(c) provides that the interests of the government are prejudiced if granting relief would result in the taxpayer having a lower tax liability in the aggregate for all years to which the regulatory election applies than the taxpayer would have had if the election had been timely made (taking into account the time value of money).

HOLDING

Based on the information submitted and representations made, we conclude Trust has satisfied the requirements for granting a reasonable extension of time to make an election under section 856(c) of the Code and section 1.856-2(b) of the Regulations, to be treated as a REIT for its taxable year ending Date 3.

Accordingly, Trust's election to be treated as a REIT made on its Form 1120-REIT filed on Date 8 for the tax year ending Date 3 will be considered as timely made.

This ruling is limited to the timeliness of the REIT election Trust made for its taxable year ending Date 3. This ruling's application is limited to the facts, representations, Code sections, and regulations cited herein.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In particular, no opinion is expressed with regard to whether Trust qualifies as a REIT under subchapter M of the Code.

Moreover, no opinion is expressed with regard to whether the tax liability of Trust is not lower in the aggregate for all years to which the election applies than such tax liability would have been if the election had been timely made (taking into account the time value of money). Upon audit of the federal income tax returns involved, the director's office will determine such tax liability for the years involved. If the director's office determines that such tax liability is lower, that office will determine the federal income tax effect.

The ruling contained in this letter is based upon information and representations submitted by Trust and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the ruling request, it is subject to verification on examination.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Alice M. Bennett
Alice M. Bennett
Branch Chief, Branch 3
Associate Chief Counsel
(Financial Institutions & Products)